

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES GYPSUM COMPANY,

Plaintiff,

v.

PACIFIC AWARD METALS, INC.,

Defendant.

No. C 04-04941 JSW

**ORDER GRANTING JOINT
MOTION TO VACATE CLAIM
CONSTRUCTION ORDER AND
ORDER GRANTING SUMMARY
JUDGMENT OF NON-
INFRINGEMENT AND TO
ENTER DISMISSAL ORDER**

This matter comes before the Court upon consideration of the parties' joint motion to vacate this Court's Claim Construction Order dated November 8, 2005 and the Order Granting Defendant's Motion for Summary Judgment of Non-Infringement dated March 1, 2006.

ANALYSIS

On June 30, 2006, the parties executed a Settlement Agreement in this matter. Pursuant to the terms of that agreement, the parties ask the Court to vacate its rulings on claim construction and summary judgment and to dismiss the matter with prejudice. A district court may vacate an order granting judgment upon consideration of "the consequences and attendant hardships of dismissal or refusal to dismiss" and "the competing values of finality of judgment and right to re-litigation of unreviewed disputes." *American Games, Inc. v. Trade Products, Inc.*, 142 F.3d 1164, 1168 (9th Cir. 1998) (citing *Dilley v. Gunn*, 64 F.3d 1365, 1370-71 (9th Cir. 1995) (quoting *Ringsby Truck Lines, Inc. v. Western Conference of Teamsters*, 686 F.2d 720, 722 (9th Cir. 1982))).

1 In this case, however, the claims construction order and order granting summary
2 judgment were interlocutory in nature and did not fully adjudicate the rights and claims of the
3 parties. Thus, they can be vacated at any time prior to final judgment. *See, e.g., Persistence*
4 *Software, Inc. v. The Object People, Inc.*, 200 FRAT 626, 627 (N.D. Cal. 2001); Fed. R. Civ. P.
5 54(b). In support of their motion, the parties contend that the agreement to file the instant
6 motion was a significant factor in successfully resolving this litigation. The Court concludes
7 that there are no considerations that would justify denial of the motion. Accordingly, the
8 parties' joint motion to vacate is GRANTED.


9 CONCLUSION

10 For the foregoing reasons, the Court's Claim Construction Order dated November 8,
11 2005 (Docket No. 78) and the Court's Order Granting Defendant's Motion for Summary
12 Judgment of Non-Infringement dated March 1, 2006 (Docket No. 160) are VACATED.

13 It is FURTHER ORDERED that Plaintiff's claims against Defendant and Defendant's
14 counterclaims against Plaintiff are HEREBY DISMISSED WITH PREJUDICE. The Clerk is
15 directed to close the file.

16 **IT IS SO ORDERED.**

17
18 Dated: July 3, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE